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IN THE

SUPREME COURT OF THE UNITED STATES

FALL TERM 1980

NO. 79-1995

THE CITY OF LOS ANGELES,

Petitioner,

vs.

ADOLPH LYONS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT
OF APPEALS FOR THE NINTH CIRCUIT

RESPONDENT'S MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS; AFFIDAVIT OF ADOLPH LYONS

MICHAEL R. MITCHELL
5850 Canoga Avenue
Fourth Floor
Woodland Hills, CA 91367
(213) 992-1203

Attorney for Respondent
Adolph Lyons

MOTION FOR LEAVE

TO PROCEED IN FORMA PAUPERIS

Respondent ADOLPH LYONS hereby moves the Court for leave to proceed in forma pauperis, without prepayment of fees and costs or security therefore, as shown by his affidavit appended hereto.

MICHAEL R. MITCHELL
5850 Canoga Avenue, 4th Fl.
Woodland Hills, CA 91367
(213) 992-1203

Attorney for Respondent

IN THE SUPREME COURT OF THE UNITED STATES

FALL TERM, 1980

NO. 79-1995

CITY OF LOS ANGELES,	)
Petitioner,	)
vs.	)
ADOLPH LYONS,	)
Respondent.	)

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED ON APPEAL IN FORMA PAUPERIS

I, ADOLPH LYONS, being first duly sworn, depose and say that I am the respondent in the above-entitled case; that in support of my motion to proceed without being required to pre-pay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present are that the petition for writ is untimely and should not otherwise be granted; and that if the writ is granted, the judgment of the Court of Appeals for the Ninth Circuit should be affirmed. I believe I am entitled to such rulings.

I have not sought leave to proceed in forma pauperis in any court below.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

QUESTION NO. 1:

Are you presently employed?

A. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

ANSWER TO NO. 1:

Yes.

A. $1518 gross per month; Fairview State Hospital, 2501 Harbor Boulevard, Costa Mesa, CA 92626.

QUESTION NO. 2:

Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?

ANSWER TO NO. 2:

No.

QUESTION NO. 3:

Do you own any cash or checking or savings account?

A. If the answer is yes, state the total value of the items owned.

ANSWER TO NO. 3:

Yes.

A. Checking account averages about $600.00.

QUESTION NO. 4:

Do you own any real estate?

A. If the answer is yes, describe the property and state its approximate value.

ANSWER TO NO. 4:

Yes.

A. 1/7 remainder-man interest in farm land in Louisiana after mother's death whereupon my interest would be about $1700.

QUESTION NO. 5:

List the persons who are dependent upon you for support and state your relationship to those persons.

ANSWER TO NO. 5:

Yes; son, Jason Adolph Lyons, age 10.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Adolph M. Lyons
ADOLPH LYONS

SUBSCRIBED AND SWORN TO
before me this 27th day of
August, 1980.

Laqueta R Alexander
Notary Public for California

OFFICIAL SEAL
LAQUETA R. ALEXANDER
NOTARY PUBLIC — CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
My Commission Expires May 24, 1981

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

JUSTICE

IN THE

SUPREME COURT OF THE UNITED STATES

FALL TERM 1980

NO. 79-1995

THE CITY OF LOS ANGELES,

Petitioner,

vs.

ADOLPH LYONS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT
OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

MICHAEL R. MITCHELL
5850 Canoga Avenue
Fourth Floor
Woodland Hills, CA 91367
(213) 992-1203

Attorney for Respondent
Adolph Lyons

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Respondent ADOLPH LYONS prays that the Court:

A. deny the petition for writ of certiorari or, alternatively,

B. summarily affirm the judgment of the United States Court of Appeals for the Ninth Circuit.

QUESTIONS PRESENTED FOR REVIEW

Petitioner's presentation is satisfactory.

PARTIES

Petitioner's presentation is satisfactory.

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OPINION BELOW

Petitioner's presentation is satisfactory.

JURISDICTION

Petitioner's presentation is satisfactory.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. Constitution, Article III, §2 which provides, in relevant part:

> The Judicial Power shall extend to all cases, in Law and Equity, arising under this Constitution [and] the Laws of the United States...

42 U.S.C. § 1983 which provides, in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State... subjects or causes to be subjected any... person ... to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress.

STATEMENT OF THE CASE

Petitioner's statement of the case is satisfactory, except insofar as it fails to (and could not) reflect plaintiff's motion to the District Court to amend his complaint, which motion is set for hearing September 15, 1980. Plaintiff has just discovered that at least 14 persons have been killed in

Los Angeles County in the past five years by use of a stranglehold; ten of these persons were strangled by Los Angeles officers. (See Exhibit A hereto). Eighty percent (80%) of those killed by Los Angeles officers were black males who comprise only nine percent (9%) of the City's population. Plaintiff, a black male, seeks to add allegations of discrimination against black males denying them equal protection of the law and due process.

Petitioner sought a stay from this Court of the District Court proceedings, including the hearing on preliminary injunction now set for September 22, 1980. Mr. Justice Rehnquist denied the motion to stay July 22, 1980.

SUMMARY OF ARGUMENT

The petition is premature because it seeks review of a decision on interlocutory appeal at the pleading stage. There have been no evidentiary hearings; the record is bare. The case may settle or petitioner may prevail below. In any event, the Court of Appeals has not decided any federal question in conflict with any decision of this Court; respondent is seeking carefully narrowed equitable relief to stop needless police stranglehold deaths.

ARGUMENT

A. THE PETITION IS PREMATURE

The City seeks Supreme Court review of the Ninth Circuit's decision on an interlocutory appeal of the District Court's dismissal of two (2) counts of Lyons' complaint. The District Court expressly determined, pursuant to FRCP 54(b), that there

was no just reason for delay, expressly directed entry of judgment, and stayed proceedings pending the appellate decision. To date, there have been no evidentiary hearings and only minimal discovery. Extensive expert deposition discovery is being undertaken in anticipation of the hearing on plaintiff's motion for preliminary injunction now set for September 22, 1980. The parties anticipate consolidating with this hearing the declaratory relief and permanent injunction hearings.

The record now is devoid of testimony by any party or any expert. This Court should allow Lyons to present evidence at the hearing, which will show that officers of Los Angeles have killed at least ten persons since 1975 with these strangleholds, including at least three in the first six months of 1980, and that the overwhelming view of medical and martial arts experts is that the strangleholds are likely to result in death.

With the presentation of this evidence, the case may settle. If not, the parties may accept the judgment of the District Court, or, if any party appeals, the Ninth Circuit will have an opportunity, for the first time, to cull the evidence and consider the case anew. In any event, the case would then reach this Court, if at all, with a complete evidentiary record. It would now be a waste of the Court's time to issue the Writ when, if the parties wish, the Court may have the opportunity to do so in the future on a full record.

B. THE COURT OF APPEALS HAS NOT DECIDED A FEDERAL QUESTION IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT

(1) AN ARTICLE III, §2 CASE OR CONTROVERSY EXISTS IN THIS CASE

Petitioner claims that the instant decision conflicts with O'Shea v. Littleton (1974) 414 U.S. 488, 94 S.Ct. 669, 38 L.Ed. 2d 674 and Rizzo v. Goode (1976) 423 U.S. 362, 96 S.Ct. 598, 46 L.Ed. 2d 561. This claim is incorrect.

In O'Shea, this Court held that the case-or-controversy requirement of Article III was not satisfied when persons complained that if they violated a law, if they were charged, if they were held to answer and if they were tried, they might be subjected to discriminatory practices by local judges.

The instant case is clearly distinguishable. Here plaintiff, a young black male, claims he was stopped by Los Angeles police officers because one of the taillights on his car was burned out--whereupon, without any provocation or reason to fear for their safety, police officers strangled him unconscious. Plaintiff claims that the police department actively trains and encourages use of these strangleholds in non-life-threatening situations and that severe permanent injuries and ten deaths have resulted. Lyons is not seeking to work his way through a five-fold process, as plaintiffs did in O'Shea. He is pleading that as soon as you get stopped by Los Angeles police--even for a burned out taillight--you may be strangled to death, as a matter of unconstitutional, ignorant policy.

As the Court of Appeals noted, "the odds of having that sort of encounter are much greater than the odds of having the sort of encounters described in O'Shea or in Rizzo, and there-

fore meet the constitutional requirements of 'case' or 'controversy,'" giving Lyons standing to seek injunctive and declaratory relief. Moreover the Court of Appeals found that there were independent reasons for granting Lyons relief because he is seeking very narrow relief: a declaration that the strangleholds constitute the use of deadly force and/or an injunction against use of strangleholds, not in every instance, but only absent the threat of deadly force. He is not seeking any massive structural relief such as was sought in Rizzo.

In Rizzo, supra, plaintiffs sought massive structural relief enjoining misconduct by a "small unnamed minority" of policemen who might do something to them in the future because of that unknown officer's perception of departmental disciplinary procedures." 423 U.S. at 372, 96 S.Ct. at 605. Lyons seeks carefully limited preventative relief (rather than structural relief) from departmentally authorized conduct (rather than misconduct) by all Los Angeles police officers who strangle a hugely disproportionate percentage of black males to death because of the officers' correct perception of departmental policy about when strangleholds can be applied. But the official policy is totally wrong. It is promulgated without consideration of the extensive expert opinion that the strangleholds constitute deadly force.

There is even support for this proposition in California case law. People v. Sanders (1969) 268 C.A. 2d 802, 805, n.1, 74 Cal.Rptr. 350, where the court stated:

> In the San Francisco Public Library we find a work (Bruce Tegner (1961), Judo for Fun, pp. 20-21--Library of Congress Catalog Number 61-16761) wherein it is stated: "Chokes must not be attempted by any Judo player unless there is

a Black Belt instructor present who is trained in the art of resuscitation (Kappo or Katsu). It is foolish and dangerous to attempt choking techniques without this safety precaution. Although there are some instructors who, unfortunately allow it, chokes against the windpipe should not be practiced. Chokes against the windpipe can be fatal. If at any time a windpipe choke is applied to you--you must submit immediately and refuse to practice with anyone who applies chokes of this nature. [¶] It requires more skill to apply Judo chokes properly, against the carotid artery. You must not apply even a legal choke without the presence of a Black Belt Instructor. The legal choke against the carotid artery can cause unconsciousness and there is danger of serious permanent injury or even fatality if the unconscious person is not revived within a matter of minutes."

See also Cal. Penal Code §2652.5 (misdemeanor for jail personnel to place "any chain or other mechanical restraint around the neck of any prisoner for any purpose").

(2) LYONS IS ENTITLED TO FEDERAL EQUITABLE RELIEF WHICH WOULD NOT INVOLVE SUPERVISING THE POLICE DEPARTMENT

Neither O'Shea nor Rizzo involved the threat of death to any person. But the strangleholds regularly used by Los Angeles officers do kill; they constitute deadly force.

The City argues that the "district court would be faced with the prospect of contempt hearings in each instance where

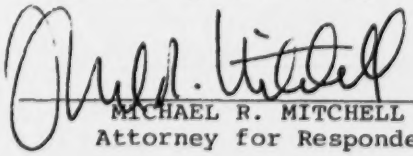
the 'bar arm' or 'carotid artery' control hold is used, in order to determine if the requisite threat of the immediate use of deadly force existed." Petition at 26. This argument presumes the incredible: that Los Aneles officers would disobey the law. It is presumed that official duty will be regularly performed and that the law will be obeyed. Cal. Evidence Code §664; Cal. Code of Civil Procedure §3548.

If the District Court grants injunctive relief, no serious problems would result. Presumably, Los Angeles would amend its policy to reflect (and advise its officers) accordingly that the strangleholds are deadly and must not be used unless deadly force is called for. Presumably, the officers would obey the law, follow the new policy and would stop ignorantly and needlessly killing citizens. No "supervision" of the Los Angeles Police Department is called for. The City is free to fashion and implement whatever policy it wishes to advise and properly instruct its officers.

If the Court grants declaratory relief, the same result should occur.

For the foregoing reasons, Respondent ADOLPH LYONS requests that the petition for certiorari be denied.

Respectfully submitted,



MICHAEL R. MITCHELL
Attorney for Respondent

LOS ANGELES COUNTY STRANGLEHOLD DEATHS

1975-1980

A. BY LOS ANGELES OFFICERS

1. Victim CARL MICHAEL MIDDLETON (LA Coroner's Case No. 75-6505) Black male, aged 25 to 30 years old, died May 27, 1975, after being "choked out" by Los Angeles police officers during arrest. Cause of death: Asphyxiation due to manual compression of the neck.
2. Victim FRANK FAIRBANKS (LA Coroner's Case No. 75-9571) Caucasian male, aged 21, died August 10, 1975, after application of Bar Arm Control by Los Angeles police officer. Cause of death: Acute cardio-respiratory arrest due to compression of the neck. (Negative drugs).
3. Victim BOOKER T. FORD, JR. (LA Coroner's Case No. 75-13320) Black male, aged 28 years old, died November 4, 1975 after Los Angeles police officer Robert Hyde applied a stranglehold. Cause of death: acute cardio-respiratory arrest due to compression of the neck.
4. Victim EDWARD DAILY (LA Coroner's Case No. 76-12099) Black male, aged 19, died October 6, 1976 after "cardio-respiratory arrest in back of police car." Cause of death: Asphyxiation due to neck restraint procedure for abnormal behavior associated with phencyclidine use.
5. Victim ALVIN WHITEHEAD (LA Coroner's Case No. 78-1594) Black male, aged 34, died February 1, 1978 after Los Angeles police officers twice applied bar arm control. Cause of death: Fracture, cervical spine with crush injury of spinal cord. Mode of death: homicide.
6. Victim DAVID RANDALL ADKINS (LA Coroner's Case No. 78-9095) Black male, aged 39, died July 24, 1978 after application of "choke hold" by Los Angeles police officers. Cause of death: Asphyxia due to neck compression during restraining procedures.

7. Victim CHADWICK TURK (LA Coroner's Case No. 79-10933) Black male, aged 30, died September 1, 1979 after "choke hold" applied by Los Angeles International Airport Security Officers. Cause of death: Acute cardio-respiratory arrest during restraining procedures for acute psychosis with agitation. Severe neck injuries noted.

8. Victim ROBERT CAMERON (LA Coroner's Case No. 80-360) Caucasian male, aged 32, died January 7, 1980 after application of choke hold by Los Angeles police officers. Cause of death: Hypoxic Encephalopathy (lack of oxygen to brain) due to respiratory arrest following application of a "choke hold" by police officers while in state of acute ethanol and cocaine intoxication (but Coroner's toxicological analysis is completely negative for ethanol, cocaine and all other drugs).

9. Victim JAMES WRIGHT (LA Coroner's Case No. 80-3230) Black male, aged 41, died March 7, 1980 after application of bar arm control by off-duty Los Angeles police officer. Cause of death: Acute cardio-respiratory arrest due to carotid control hold of neck (fracture of thyroid).

10. Victim LARRY MORRIS (LA Coroner's Case No. 80-7810) Black male, aged 29 years, died June 17, 1980 after Los Angeles police officers "unsuccessfully attempted to apply a carotid control hold." Autopsy report pending.

B. BY OTHER THAN LOS ANGELES OFFICERS

11. Victim RUDY RAUL GARCIA (LA Coroner' Case No. 77-7065) Caucasian male, 22 years old, died June 12, 1977 after being brought to the ground with a "bar hold" by two Pomona, CA police officers. Cause of death: neck compression during arrest procedure.

12. Victim ANTHONY BROWN (LA Coroner's Case No. 78-7428) Black male, aged 23, died June 13, 1978, after choke hold applied by Sears Roebuck security officer. Cause of death: Asphyxia due to compression of neck during restraining procedure.

13. Victim HAROLD T. HARRIS (LA Coroner's Case No. 78-11076) Black male, aged 23, died September 7, 1978 after being arrested and restrained by Compton, CA police officers. Cause of death: Asphyxia during restraining procedure for acute psychosis of phencyclidine intoxication.

14. Victim WILLIAM L. PRIETO (LA Coroner's Case No. 80-4227) Caucasian male, aged 53, died March 31, 1980 by a choke hold during arrest by a citizen. Cause of death: Compression and fracture of spine, as a consequence of a "neck control hold."

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF

I, the undersigned, say (check applicable paragraph):

☐ I am a party to this action. I have read the foregoing document and know its contents. The matters stated in it are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am an officer a partner_____ of _____, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I have read the foregoing document and know its contents. I am informed and believe and on that ground allege that the matters stated in it are true.

☐ I am one of the attorneys for _____, a party to this action. Such party is absent from the county of aforesaid where such attorneys have their office, and I make this verification for and on behalf of that party for that reason. I have read the foregoing document and know its contents. I am informed and believe and on that ground allege that the matters stated in it are true.

Executed on _____, 19____, at _____, California.

I declare under penalty of perjury that the above is true and correct.

_____
(Signature)

Subscribed and sworn to before me this _____ day of _____, 19____.

Notary Public in and for said County and State

ACKNOWLEDGMENT OF RECEIPT

Received copy of the within document on _____, 19____.

_____
(Signature)

PROOF OF SERVICE BY MAIL

I am a resident of the county aforesaid; I am over the age of 18 and not a party to the within action; my business address is:
5850 Canoga Avenue, 4th Floor, Woodland Hills, CA 91367

On August 28, 1980, I served the within document on the parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Woodland Hills addressed as follows:

Lewis N. Unger
Deputy City Attorney
1800 City Hall East
200 N. Main Street
Los Angeles, CA 90012

Executed on August 28, 1980 at Woodland Hills, California.

(check applicable paragraph below)

☐ (State) I declare under penalty of perjury that the above is true and correct.

☒ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Laquetz R Alexander
(Signature)

LAQUETZ R. ALEXANDER